



DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Trial and Appeal Board (PTAB) Actions (formerly Board of Patent Appeals and Interferences (BPAI) Actions)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0063 comment" in the subject line of the message.
- Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.
- Federal Rulemaking Portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Linda Horner, Acting Vice Chief Judge, Patent Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-9797; or by e-mail to [linda.horner@uspto.gov](mailto:linda.horner@uspto.gov). Additional information about this collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

#### SUPPLEMENTARY INFORMATION

##### I. Abstract

The Patent Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6. This statute

directs that PTAB "shall on written appeal of an applicant, review adverse decisions of examiners upon applications for patent and shall determine priority and patentability of invention in interferences." PTAB has the authority, under pre-AIA sections of the Patent Act, i.e., 35 U.S.C. 134, 135, 306, and 315, to decide ex parte and inter partes appeals and interferences. In addition, 35 U.S.C. 6 establishes the membership of PTAB as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges. Each appeal and interference is decided by a merits panel of at least three members of the Board.

Two of the Board's responsibilities under the statute include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant, and the administration of interferences to "determine priority" (or decide who is the first inventor) whenever an applicant claims the same patentable invention that is already claimed by another applicant or patentee. In inter partes reexamination appeals, PTAB reviews examiner's decisions adverse to a patent owner or a third-party requestor.

PTAB's opinions and decisions for publicly available files are published on the USPTO Web site.

There are no forms associated with these items. However, they are governed by rules in Part 41. Failure to comply with the appropriate rule may result in dismissal of the appeal or denial of entry of the paper.

The USPTO is adding an existing information requirement, the Petitions to the Chief Administrative Patent Judge, into this information collection. This requirement is currently covered under information collection 0651-0072 America Invents Act Section 10 Patent Fee Adjustments. At the time of the publication of the USPTO rulemaking, "Setting and Adjusting Patent Fees" (RIN 0651-AC54), the petitions to the Chief Administrative Patent Judge were not covered by any existing information collection request, so it was included in the 0651-0072 submission because the fee associated with this petition was affected by the rulemaking. As part of this renewal, the USPTO is moving this information requirement into this collection because it is associated with the activities covered by this collection. However, only the information requirement and the non-fee burden for the petitions will be moved into 0651-0063. The fee will remain in 0651-0072.

## II. Method of Collection

By mail, hand delivery, or facsimile when an applicant files a brief, petition, amendment, or request. These papers can also be filed as attachments through EFS-Web.

## III. Data

OMB Number: 0651-0063.

Form Number(s): None.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, businesses or other for profits, non-profit institutions, and the Federal Government.

Estimated Number of Respondents: 34,537 responses per year. The USPTO estimates that approximately 25% (8,634) of these responses will be from small entities. The USPTO also estimates that approximately 93% (32,119) of the briefs, requests, petitions, and amendments will be filed electronically.

Estimated Time Per Response: The USPTO estimates that it takes the public approximately 2 to 32 hours to complete this information, depending on the complexity of the request. This includes the time to gather the necessary information, prepare the brief, petition, and other papers,

and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, prepare the brief, petition, and other papers, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

Estimated Total Annual Respondent Burden Hours:

858,683 hours per year.

Estimated Total Annual Respondent Cost Burden:

\$334,027,687 per year. The USPTO expects that all of the information in this collection will be prepared by an attorney. Using the professional hourly rate of \$389 for attorneys in private firms, the USPTO estimates that the total respondent cost burden for this collection is \$334,027,687 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Amendment	2 hours	19	38
Electronic Amendment	2 hours	248	496
Appeal Brief	32 hours	1,781	56,992
Electronic Appeal Brief	32 hours	23,662	757,184
Reply Brief	5 hours	578	2,890
Electronic Reply Brief	5 hours	7,672	38,360
Request for Rehearing Before the PTAB	5 hours	29	145
Electronic Request for Rehearing Before the PTAB	5 hours	386	1,930
Petitions to the Chief Administrative Patent Judge	4 hours	11	44

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Under 37 CFR 41.3			
Electronic Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	4 hours	151	604
<b>TOTAL</b>	-----	<b>34,537</b>	<b>858,683</b>

Estimated Total Annual Non-hour Respondent Cost Burden: \$48,239 per year. There are no maintenance, operation, capital start-up, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of postage costs. There are also filing fees for the appeal briefs and the petitions to the chief administrative patent judge, but these fees are not included in the annual (non-hour) cost burden for this collection. These fees are covered instead under 0651-0072 America Invents Act Section 10 Patent Fee Adjustments.

The briefs, petitions, and other papers may be submitted by mail through the United States Postal Service. The USPTO expects the items in this collection to be mailed by Express Mail using the flat rate envelope, which can accommodate both the varying submission weights of these submissions and the various postal zones. Using the Express Mail flat rate cost for mailing envelopes, the USPTO estimates that the average cost for sending these

submissions by Express Mail will be \$19.95 and that approximately 2,418 may be mailed to the USPTO.

The USPTO estimates that the total postage cost for this collection will be \$48,239 per year.

Item	Responses	Postage Cost	Total Postage Cost
EXPRESS MAILING COSTS			
Amendment	19	\$19.95	\$379.00
Appeal Brief	1,781	\$19.95	\$35,531.00
Reply Brief	578	\$19.95	\$11,531.00
Request for Rehearing Before the PTAB	29	\$19.95	\$579.00
Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3	11	\$19.95	\$219.00
<b>Total Postage Costs</b>	<b>2,418</b>	<b>-----</b>	<b>\$48,239.00</b>

#### IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and



clarity of the information to be collected; and (d)  
Minimize the burden of the collection of information on  
those who are to respond, including through the use of  
appropriate automated, electronic, mechanical, or other  
technological collection techniques or other forms of  
information technology, e.g., permitting electronic  
submission of responses.

Dated: November 8, 2013

Susan K. Fawcett,  
Records Officer, USPTO,  
Office of the Chief Information Officer.  
BILLING CODE: 3510-16-P

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